

TESTIMONY OF THE NAVAJO NATION

**SUBMITTED TO
THE UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

**S.1508 "INDIAN TRIBAL JUSTICE TECHNICAL AND
LEGAL ASSISTANCE ACT OF 1999"**

**PRESENTED BY
VICE PRESIDENT TAYLOR MCKENZIE, M.D.**

SEPTEMBER 29, 1999

**COMMENTS ON S. 1508,
“INDIAN TRIBAL JUSTICE TECHNICAL AND
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GENERAL CONCLUSIONS

The general thrust of this bill, as outlined in Senator Campbell's August 5, 1999 introduction speech, is excellent. The 30 Indian Legal Services (“ILS”) organizations the senator mentions are vital to justice in Indian country. DNA-People's Legal Services has had a central role in introducing the concept of the rule of law to the Navajo Nation, and many Navajo leaders have worked for DNA in one capacity or other. It can be said to be one of the major training grounds for law and democracy in the Navajo Nation. DNA has maintained a long-lasting and fruitful partnership with the Courts of the Navajo Nation and the Navajo Nation Bar Association.

The three areas targeted for assistance are (1) training for Indian nation judicial personnel, (2) civil legal assistance within Indian nation justice systems, and (3) criminal assistance within Indian nation justice systems. All three are badly needed, as will be discussed below.

RELATIONSHIP TO THE INDIAN TRIBAL JUSTICE ACT OF 1993

While Senator Campbell said, “I want to be clear: the legislation I am introducing today is intended to complement, not substitute for, the 1993 [Indian Tribal Justice] Act,” unfortunately, S. 1508 would not complement that Act at all. Its authorization provisions for funding Indian nation justice systems will expire on October 1, 1999, two days after the upcoming hearing on S. 1508.

The Indian Tribal Justice Act has gone through its entire short life without Congress appropriating one *cent* for Indian nation judicial systems. While surely some blame for a lack of support can be laid at the doors of the Bureau of Indian Affairs, we must ask why it is, that if there was congressional will to support of Indian justice systems, that will did not bear fruit in the form of appropriations.

The Indian Tribal Justice Act became law in December 1993. According to Government Accounting Office Report No. GAO/NSIAD-99-158, Congress appropriated \$970 million for foreign “rule of law” programs between FY 1993 and 1998. \$74.2 million (21.3%) was set aside for foreign judicial and court operations. The “rule of law” which concerns most observers of Indian nation courts is the Indian Civil Rights Act of 1968. As the various federal reports since then indicate, Congress has never given Indian nation courts the funding they need to implement that foundation of the rule of law concept.

If S. 1508 is designed to supplement the Indian Tribal Justice Act, then there should be an amendment which re-authorizes spending under the 1993 statute, and at far higher levels to accommodate the many new Indian justice systems which have come on line or are about to come on line.

SECTION 101: TRIBAL JUSTICE TRAINING AND TECHNICAL ASSISTANCE GRANTS:

There are two concerns with this section: The first is that while the Attorney General has the authority to define training and technical assistance programs and consider applications from “national or regional membership organizations and associations whose membership consists of judicial system personnel

within tribal justice systems,” there are no standards for what those programs or organizations. The second problem is that there are organizations which are not directly affiliated with Indian nation governments which may attempt to get the funding.

To be to the point on this, in 1982, the Bureau of Indian Affairs terminated funding for the National American Indian Court Judges Association. It conducted excellent training and education programs, and it promoted the Indian judiciary by allowing Indian nation judges to come together to discuss policy questions of mutual interest. Similarly, regional associations of judges and judicial conferences such as the Navajo Nation Judicial Conference could benefit from the receipt of grants under this section. However, there are academic-based organizations which could claim that they have judicial system personnel members on a board, and they should not benefit from such a grant. Too often, academic programs seek grant funding under the guise of aiding Indian country programs, but the grant funds are used for organizational aggrandizement and not to serve Indian country.

At minimum, there should be language in a report on the bill, if passed, which makes it clear that eligible organizations must be *membership* organizations of judges and judicial personnel, and academic institutions with boards comprised of such members would not be eligible for this funding.

SECTION 102: CIVIL LEGAL ASSISTANCE GRANTS

Here too, the scope of civil legal assistance is not defined, and this should not be left to the discretion of the Attorney General. Aside from individual legal representation, programs such as DNA-People’s Legal Services are performing other valuable services. For example, DNA has a pro se clinic which assists individuals in preparing the paperwork for their own civil case. DNA has undertaken public consumer education programs and worked with merchants to promote Navajo peacemaking as an alternative for consumers with complaints. Grants under this section should encourage a maximum in flexibility and encourage innovation. The grant programs should not be designed in Washington - they should be designed by Indian legal service programs.

SECTION 103: TRIBAL CRIMINAL ASSISTANCE GRANTS

Innovation and local definition should be encouraged. Of particular interest to the Navajo Nation Judicial Branch is the fact that the Navajo Nation age cohort of children under age 9 (1990 Census) is 25% of the Navajo Nation population. Studies of crime show that if a child is abused or neglected, that child is equally likely to enter the cycle of violence as a teen. Therefore, early intervention to help children is a key to crime prevention. ILSP contributions using these grant monies could have a major impact.

FINAL RECOMMENDATION

The Senate Committee on Indian Affairs should hold an oversight hearing to find out what happened with the Indian Tribal Justice Act of 1993 and to review U.S. Justice Department programs for Indian country. The glaring inadequacy is the fact that while Indian nation judicial systems are offered competitive grants, of limited duration, for pilot project programs, they do not receive funding for basic *infrastructure* needs. Indian nation courts need basic facilities, equipment, and personnel, not the justice fad *du jour*. They need a foundation before attempting innovations.

As Senator Campbell noted, “crime, particularly violent crime, is rampant on Indian lands.” Crime can be addressed in many ways, including innovative civil remedies. New ways of addressing crime, such as “therapeutic justice” and the traditional Indian justice which it mirrors, do require judicial education. However, there are those would attempt to design programs in Washington rather than reward innovation, and there are those who would take monies aimed at Indian country and keep them outside of Indian country. This bill does not authorize a gravy train. It authorizes some basic programs within Indian country. The grants should be designed in Indian country, and the grant monies should remain in Indian country. The Senate Committee on Indian Affairs should hold an oversight hearing to get at the question

of what programs are and are not funded and what is happening with Justice Department funding.

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